

ON REHEARING

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 03-7657

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

ERNEST BAILEY,

Defendant - Appellant.

No. 04-6556

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

ERNEST BAILEY,

Defendant - Appellant.

Appeals from the United States District Court for the District of Maryland, at Baltimore. Marvin J. Garbis, Senior District Judge. (CR-00-152-MJG; CA-02-4025-MJG)

Submitted: August 20, 2004

Decided: August 31, 2004

Before WIDENER and TRAXLER, Circuit Judges, and HAMILTON, Senior Circuit Judge.

No. 03-7657 affirmed; No. 04-6556 dismissed by unpublished per curiam opinion.

Ernest Bailey, Appellant Pro Se. A. David Copperthite, OFFICE OF THE UNITED STATES ATTORNEY, Baltimore, Maryland, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

In appeal No. 03-7657, Ernest Bailey appeals the district court's order denying relief on his motion to vacate or modify sentence under 28 U.S.C. § 2255 (2000). The district court granted a certificate of appealability as to Bailey's claim of prosecutorial misconduct in his § 2255 motion. In an opinion issued on January 28, 2004, we dismissed Bailey's appeal as untimely. Bailey petitioned for panel and en banc rehearing, asserting that the district court had granted him an extension of time in which to file a notice of appeal pursuant to Fed. R. App. P. 4(a)(5)(A), and his notice of appeal was therefore timely filed. Upon consideration of his petition, we granted panel rehearing in an order filed on May 26, 2004. On rehearing, we have reviewed the record and find no reversible error. Accordingly, we affirm on the reasoning of the district court. See United States v. Bailey, Nos. CR-00-152-MJG; CA-02-4025-MJG (D. Md. filed July 31, 2003 & entered Aug. 1, 2003).

In appeal No. 04-6556, Bailey seeks to appeal the district court's denial of his Fed. R. Civ. P. 60(b) motion seeking reconsideration of the denial of his § 2255 motion. An appeal may not be taken from the final order in a § 2255 proceeding unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1) (2000). A certificate of appealability will not issue absent "a substantial showing of the denial of a

constitutional right." 28 U.S.C. § 2253(c)(2) (2000). A prisoner satisfies this standard by demonstrating that reasonable jurists would find that his constitutional claims are debatable and that any dispositive procedural rulings by the district court are also debatable or wrong. See Miller-El v. Cockrell, 537 U.S. 322, 338 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000); Rose v. Lee, 252 F.3d 676, 683 (4th Cir. 2001). We have independently reviewed the record and conclude that Bailey has not made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss the appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

No. 03-7657 AFFIRMED;
No. 04-6556 DISMISSED